

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
COMMONWEALTH OF VIRGINIA)
DEPARTMENT OF STATE POLICE)
)
Request for Waiver of Section 90.537 of the)
Commission's rules)

ORDER

Adopted: March 8, 2016

Released: March 8, 2016

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

1. *Introduction.* The Commonwealth of Virginia Department of State Police (Virginia) requests waiver¹ of Section 90.537(a) of the Commission's rules² (narrowband trunking requirements) relative to its Statewide Agencies Radio System (STARS) so that it may use non-trunked State channels and former reserve channels (now General Use channels) in its existing 700 MHz digital vehicular repeater units (DVRS).³ For the reasons stated below, we conditionally grant Virginia's waiver request.

2. *Background.* The Commission established trunking requirements for narrowband systems in the 700 MHz public safety narrowband spectrum in the interest of efficient spectrum use.⁴ Currently, Section 90.537(a) specifies that all systems using six or more narrowband General Use channels or State channels must operate in the trunked mode.⁵

3. STARS uses VHF digital trunked narrowband land mobile radio technology for its system infrastructure and relies on 700 MHz DVRS units in over 3,600 vehicles to enable 700 MHz handheld portable units to communicate, through the DVRS, with the system infrastructure.⁶ When STARS was implemented, and to date, there are no trunked vehicular repeaters available,⁷ and there is no Project 25 – the technology used on the STARS system – specification for a trunked vehicular repeater⁸ Additionally, Virginia argues, trunking generally assumes a fixed infrastructure whereas Virginia's DVRS units are mobile, not fixed.⁹ Virginia claims that it only recently became aware that Section

¹ Request for Waiver filed by the Virginia Department State Police (VSP) (Waiver Request).

² 47 C.F.R. § 90.537(a).

³ Waiver Request at 1.

⁴ See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 211 ¶ 131 (1998).

⁵ 47 C.F.R. § 90.537(a).

⁶ Waiver Request at 1.

⁷ *Id.* at 4.

⁸ The Futurecom DVRS model used by STARS is designed for 96 channel operation and does not include a trunking capability. *Id.*

⁹ *Id.*

90.537 – if strictly construed -- could apply to DVRS units,¹⁰ and thus has requested the instant waiver of Section 90.537.¹¹

4. *Decision.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁴

5. We find that unique factual circumstances exist that would make application of the trunking rule to Virginia's DVRS unduly burdensome and contrary to the public interest. We believe that the Commission did not have DVRS units in mind when it enacted the trunking requirements, but rather contemplated that trunking would apply only to fixed infrastructure. Moreover, the fact that trunked DVRS units are not available suggests that such units would be infeasible, or, if feasible, inordinately expensive.

6. In light of these unusual circumstances, denial of Virginia's waiver request would be unduly burdensome and contrary to the public interest. Denial would potentially interfere with Virginia's operational needs, create unnecessary expense, and complicate Virginia's frequency planning. We note that Regional Planning Committee 20 has approved Virginia's use of additional channels for the STARS system conditioned on grant of the instant waiver request. The waiver granted hereunder will expire on the earlier of 1 year from the release date of this order or on the effective date of the Commission taking further action to address 700 MHz narrowband licensing and operational requirements applicable to vehicular repeater systems.

7. *Ordering Clause.* Accordingly, IT IS ORDERED that the Request for Waiver filed by the Commonwealth of Virginia Department of State Police IS GRANTED conditioned as discussed herein.

8. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).